TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 226.

PABLO MAESE, JOSÉ L. LOPEZ, DIONICIO GONZALEZ, AND JESUS MARIA TAFOYA, APPELLANTS,

vs.

BINGER HERMAN, COMMISSIONER OF THE GENERAL LAND OFFICE OF THE UNITED STATES, AND ETHAN ALLEN HITCHCOCK, SECRETARY OF THE DEPARTMENT OF THE INTERIOR OF THE UNITED STATES.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED JANUARY 14, 1901.

(18,018.)

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(18,018.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 533.

PABLO MAESE, JOSÉ L. LOPEZ, DIONICIO GONZALEZ, AND JESUS MARIA TAFOYA, APPELLANTS,

vs.

BINGER HERMAN, COMMISSIONER OF THE GENERAL LAND OFFICE OF THE UNITED STATES, AND ETHAN ALLEN HITCHCOCK, SECRETARY OF THE DEPARTMENT OF THE INTERIOR OF THE UNITED STATES.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 21, 1901.

1 In the Court of Appeals of the District of Columbia.

PABLO MAESE ET AL., Appellants,
vs.
BINGER HERMAN, Commissioner, &c., ET AL. } No. 971.

Supreme Court of the District of Columbia.

PABLO MAESE ET AL.
vs.
BINGER HERMAN, Commissioner of the General Land Office of the United States, *et al.* } No. 20276. Equity.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Bill.

Filed March 22, 1899.

In the Supreme Court of the District of Columbia, the — Day of March, 1899.

PABLO MAESE, JOSÉ L. LOPEZ, DIONICIO GONZALEZ, Jesus Maria Tafoya
vs.
BINGER HERMAN, Commissioner of the General Land Office of the United States, and Ethan Allen Hitchcock, Secretary of the Department of the Interior of the United States. } No. 20276, Equity Docket 46.

To the supreme court of the District of Columbia, holding an equity court:

The plaintiffs state as follows:

1. They and each of them are citizens of San Miguel county, in the Territory of New Mexico, and reside on what is known as the Las Vegas land grant, situated in said county, and they bring this suit in their own right as heirs of the original grantees of said grant and on behalf of all the other heirs and assigns of the original grantees of said grant who now have any interest therein and
2 who have a common interest with said plaintiffs and who will bear their *pro rata* share of the costs herein.

2. The plaintiffs further state that all the heirs and assigns of the original grantees in and to said grant are too numerous to be made parties by name.

3. The defendant Binger Hermann is a citizen of the United States and a resident of the District of Columbia, and is sued in this action as the Commissioner of the General Land Office of the United States; the defendant Ethan Allan Hitchcock is also a citizen of the United States and a resident of the District of Columbia, and is sued in this action as the Secretary of the Department of the Interior of the United States.

4. On the 20th day of March, 1835, Juan Dios Maese, Miguel Archuleta, Manuel Duran, and Jose Antonio Cassaos, for themselves and on behalf of twenty-five men, appeared before the corporation of El Bado, in the Territory of New Mexico, Mexico, and to said corporation of El Bado presented their petition, according to law, wherein they stated that, having registered a vacant and uncultivated piece of land, commonly known by the name of Las Vegas, on the Galinas river, which they desired for the cultivation of moderate crops and for pasture and watering places, *and* they then and there petitioned said corporation for said tract of land, the same being then and there under the jurisdiction of the corporation of El Bado and bounded as follows: "On the north by the Sapello river, on the south by the boundary of the grant of Don Antonio Ortiz, on the east by the Aguage de la Zegua, and on the west the boundary of the grant to San Miguel del Bado," and they asked that the same be granted and set off to them, and that they be given possession thereof. The tract of land contained within said boundaries is the same tract of which survey was afterwards made in 1860 and approved by the surveyor general of New Mexico, as will hereafter appear, and contains 496,446.96 acres of land.

5. On the same day on which said petition was presented it was transmitted to the territorial deputation, with the recommendation that the same be granted.

6. On the 23rd day of March, 1835, the application was approved, and the grant was made by the territorial deputation, with the boundaries asked for, with the provision that persons who owned no land were to be allowed the same privilege of settling upon the grant as those who petitioned for it, and that "the pasture and watering places are free to all."

7. On the 24th day of March, 1835, Francisco Sarracino, the acting governor or political chief of the Territory of New Mexico, approved said action of the territorial deputation and directed the constitutional justice of El Bado to place the parties in possession of the lands prayed for.

8. On the 6th day of April, 1835, José Jesus Ulibarri, constitutional justice, went upon the ground with the parties, exhibited to them the original petition praying for the grant, pointed out the boundaries as set forth in the petition, and placed them in
3 complete and full possession of all the land contained in said grant; whereupon said grant became and was in all respects valid, and all the land included within the exterior limits of said grant then and there became and was segregated from the public lands of Mexico and of the Territory of New Mexico, and then and there became the private property of said individual grantees, and

has ever since *hereto* been and still is the private property of said grantees, their heirs and lawful assigns.

9. The plaintiffs aver and charge that they and each of them are legal heirs of certain of the original grantees of and to said Las Vegas land grant—that is to say, the said Pablo Maese is a son of and legal heir to the said Juan de Dios Maese; José L. Lopez is a grandson and legal heir to Francisco Lopez, and is also the administrator of the estate of the said Francisco Lopez; the said Dionicio Gonzalez is a grandson of and legal heir to Santiago Ulibarri, and the said Jesus Maria Tafoya is a grandson of and heir to Antonio Romo; and plaintiffs aver that the said Juan de Dios Maese, Francisco Lopez, Santiago Ulibarri, and Antonio Romo were each and all of the original grantees of and to said Las Vegas land grant; and plaintiffs further aver and charge that the said Juan de Dios Maese, Francisco Lopez, Santiago Ulibarri, and Antonio Romo have all departed this life, and that they each and all died seized and possessed of undivided interests in and to all of the lands embraced and included in said land grant, and that as their heirs respectively said plaintiffs are now the true and real owners of undivided interests in said land, the separate interest therein of each being of the full value of not less than ten thousand dollars.

10. By the treaty and protocol of Guadalupe Hidalgo, made between the United States and Mexico on the 30th day of May, 1848, it is provided that nothing in the treaty shall annul grants of land made in the ceded territory; that all such grants shall preserve the legal value which they possess under Mexican laws, and that legitimate titles to every description of personal and real property existing in the ceded territories are those which were legitimate titles under the Mexican laws in California and New Mexico up to the 13th of May, 1848. The said land included in said grant was in the Territory of New Mexico at and before May 13, 1848, and by the express terms of said treaty, as also by the laws of nations, the validity of said grant was in nowise impaired by reason of the cession of New Mexico to the United States, but, upon the contrary, it was in effect thereby declared upon the part of the United States that they would protect the title of said grantees, their heirs and assigns, in and to all of said land.

Plaintiffs further aver and charge that all of said lands embraced and included in said grant are now reasonably worth and of the value of two millions of dollars.

11. By the 8th section of the act of Congress of July 22, 1854 (10 Stat., 309), it was made the duty of the surveyor general of New Mexico to ascertain the origin, nature, character, and extent of all private claims of grants to land under the laws, usages, and customs of Spain and Mexico. He was authorized to issue notices,
4 summon witnesses, administer oaths, etc., and required to make full reports to the Secretary of the Interior to be laid before Congress for final action "with a view to confirm *bona fide* grants" originating before the cession by the treaty of Guadalupe Hidalgo, denoting the various grades of title, with his decision as to their validity or invalidity; also to report all pueblos, the extent,

locality, number of inhabitants, and nature and title of each, and until final action of Congress on such claims all lands covered thereby should be reserved from sale or other disposal by the Government.

Acting under instructions given to him by the Secretary of the Interior and the Commissioner of the General Land Office, William Pelham, surveyor general of New Mexico, proceeded to make surveys of private land grants in that territory. To this end he gave public notice requiring all parties who claimed grants to appear before him and present their claims by petition, setting forth particularly the grounds and character of their title and the extent of territory embraced within their respective grants. Thereupon Francisco Lopez, Henry Connolly, and Hilario Gonzalez, on behalf of themselves and a large number of the citizens of the United States, residents of the county of San Miguel and its vicinity, filed with said surveyor general their notice and petition making claim to said Las Vegas land grant, alleging that they and the citizens whom they represented were claimants and legal owners of the lands included in said grant, and asking that their claim and title be examined as required by law, and that said grant be confirmed to them.

Upon the presentation of said petition the said surveyor general proceeded to investigate the nature, character, extent, and validity of said grant, and, having made such investigation, he made a report of his findings and conclusions as he was required by law to do. By and in said report the surveyor general found that the grant made to Juan de Dios Maese *et al.*, being that under which plaintiffs now claim, was made in strict conformity to the laws and usages of Mexico at the time, and that the lands are lawfully separated from the public domain and entirely beyond the disposal of the General Government, and that said grant was valid and good.

The report of the surveyor general was in due course of proceeding regularly submitted to Congress for its action thereon, and thereafter, to wit, on June 21, 1860, the Congress of the United States formally approved tne said report of the surveyor general and duly confirmed said grant as made by the constituted authorities of the Territory of New Mexico, as aforesaid, thereby confirming in and to the original grantees named and designated in said Las Vegas grant, their heirs and assigns, their absolute right and title to all of the lands embraced within the aforesaid boundaries and limits, free of all right, title, claim, or control upon the part of the United States.

By law it is made the duty of the Commissioner of the General Land Office to issue a patent to the grantees of all private land grants which have been confirmed by Congress, and the said Commissioner of the General Land Office is, under the law, required to issue patents in all such confirmed private land grants to the grantees named in the original grant, their heirs or assigns, and in the discharge and performance of his duty therein he has no judicial or discretionary powers, but acts ministerially alone in the issuing of such patents.

By the act of Congress confirming said grant, it declared it to be a valid grant, and that the United States did not by the cession of New Mexico acquire any title to said lands or any part thereof, and by said act expressly quitclaimed all right, title, or claim to said lands, and thereby declared that the Government of the United States had no such jurisdiction over said lands as to authorize the Department of the Interior to sit in judgment upon the title or to adjudicate to whom a patent should be issued.

Plaintiffs aver that all the original grantees named and designated in said grant have departed this life, and that they each and all died seized and possessed in common of said lands, except possibly in some instances some of the original grantees had purchased the right, title, and interest of some of their cograntees in said land, and said plaintiffs further aver and charge that they and those whom they represent herein are all either heirs of the original grantees or hold title to said lands by conveyances, mediate or immediate, from original grantees of and to said lands, and that, as heirs and assigns of the original grantees, they are the true and real owners in fee absolute of all of said lands, and as such are entitled to have a patent issued to them for all of said lands.

12. December 17, 1898, upon a petition filed in the Interior Department of the United States, praying that a patent be ordered to be issued to the town of Las Vegas to all the land included in said Las Vegas grant, the Honorable Thomas Ryan, the then acting Secretary of the Interior Department, addressed a letter to the Commissioner of the General Land Office, wherein and whereby the said Interior Department ordered and directed the honorable Commissioner of the General Land Office to issue a patent to said lands to the town of Las Vegas, which order of the Interior Department now remains and continues in full force and effect, not having been set aside, vacated, or omitted.

13. Said plaintiffs are informed and believe, and upon their information and belief they charge the fact to be, that at the date of the making of said Las Vegas grant, as aforesaid, there was no place of collection of people having any legal existence under the laws, customs, or usages of the Republic of Mexico or the Territory of New Mexico known or designated as the town of Las Vegas, nor was there any town by name of Las Vegas on said grant or elsewhere at that time which under the laws in force at that time in the Territory of New Mexico had any legal or corporate existence or which under or by virtue of any law, custom, or usage in force in New Mexico could take or acquire title to lands.

And said plaintiffs allege and charge further that said land
6 grant was not made to any town by name of Las Vegas or by any other name; that the town of Las Vegas nor any other town ever petitioned the surveyor general of New Mexico to investigate the nature, character, extent, or validity of said grant, and that the only petition ever preferred to any surveyor general for such an investigation touching said grant was preferred by individuals representing the original grantees, Juan Dios Maese *et al.*, their heirs and assigns, the same hereinbefore referred to. They aver further

that said surveyor general reported that said grant was made in due form to Juan Dios Maese and his associates, and was to them a valid grant, and plaintiffs aver that said grant was duly and legally confirmed by Congress to the original grantees, the said Juan Dios Maese and his associates, and that it was not confirmed to a town by the name of Las Vegas or to any other town. Said plaintiffs further show that they are informed and believe, and upon their information and belief they charge the fact to be, that there was not on December 17, 1898, any town by name of Las Vegas anywhere in the United States having any legal or corporate existence or any defined boundaries, or that could take or acquire title, either equitable or legal, to any lands whatsoever; and, further, that there was not at the time of the cession of the country included in the Territory of New Mexico to the United States by the Republic of Mexico, or at the time of the confirmation by Congress of the United States of said Las Vegas grant, any such town having any legal or corporate existence or having any defined boundaries, or any place by that name capable in law of acquiring, having, or holding title, either legal or equitable, to the lands included within the Las Vegas grant or any other real estate.

14. Said plaintiffs are advised and believe, and therefore charge, that should a patent be issued naming as the patentee therein the town of Las Vegas that such patent would be void for the reasons hereinbefore stated, and especially for the reasons that there is not now and never was any person, natural or artificial, or any corporation by the name of Las Vegas, and they aver and charge that there is not now and was not on December 17, 1898, and was not at the date of said grant, nor at the date of the confirmation of said grant, any incorporated place by the name of Las Vegas, or any place by that name having any legal existence or any defined boundaries or boundary lines separating it from the surrounding country, nor is there now any town or place by name of the town of Las Vegas capable of taking, acquiring, or holding title to any property, real or personal.

15. Said plaintiffs are informed and believe and so charge that notwithstanding the facts that said grant was neither made to nor confirmed to a town by name of Las Vegas, and that a patent issued to a patentee named as the town of Las Vegas would be void, yet the said Commissioner of the General Land Office, under the said orders and directions of the Interior Department, will so issue the patent if not restrained from so doing by this honorable court.

7 They aver and charge that a patent issued to the town of Las Vegas would cast a cloud and a suspicion upon the title of said plaintiffs and those who are interested with them in said grant as the heirs and assigns of the said original grantees, and will result in irreparable injury to them and to each and all of them.

16. The plaintiffs have duly presented their claim to the said Interior Department and to the Commissioner of the General Land Office to said grant, and in due form asked that a patent to the lands of said grant be issued to the heirs and assigns of said original grantees,

and yet, notwithstanding all the facts as hereinbefore stated, their prayer and request have been ignored and wholly disregarded, and said Commissioner of the General Land Office is now about to issue the patent to said grant to a nonentity, called the town of Las Vegas, in violation of law and in violation of the rights of plaintiffs and to their great and irreparable injury, and will do so unless restrained from so doing by this court.

Prayer.

1. The premises considered, the said plaintiffs pray that process of subpœna may issue out of this honorable court and be served upon said Binger Hermann, the Commissioner of the General Land Office, and upon Ethan Allan Hitchcock, the Secretary of the Department of the Interior, and that they may be made parties defendant hereto and required to answer this bill, but not under oath, the plaintiff hereby waiving oath to the answers of the defendants; that an order may issue temporarily restraining them, and each of them, and all their subordinates in office from issuing a patent to said lands, naming the town of Las Vegas as patentee, wherein or whereby any title to the lands included in said Las Vegas grant might be conveyed or attempted to be conveyed to or invested in the town of Las Vegas, or of making or issuing a patent to said lands to any other than the heirs and assigns of the original grantees, as mentioned and named and described in said grant made, as aforesaid, to Juan de Dios Mease *et al.*, and that on the final hearing hereof the said injunction may be made perpetual, or if it should be that the said Commissioner of the General Land Office may, before the filing of this bill of complaint, have issued a patent to said land to the town of Las Vegas, that this honorable court will order and declare that any such patent is and shall be forever held void and of no effect, and that the same be ordered canceled, and if said Commissioner of the General Land Office has not yet issued a patent to said lands that he be by this honorable court ordered and directed to issue a patent to all of said lands to the heirs, legal representatives and assigns of the said Juan de Dios Maese, Manuel Duran, Miguel Archuleta, José Antonio Cassaos, and those who were associated with them as the original grantees and as representatives of said original grantees, and that their title in and to said lands may be quieted, and

8 said plaintiffs pray for such other and further and general relief as they may show themselves entitled to under the law and the facts; and, as in duty bound, they will ever pray, etc.

JOSÉ L. LOPEZ.
PABLO MAESE.
DIONICIO GONZALES.
JESUS M. TAFOYA.

H. C. BURNETT AND
FRED BEALL,
Attorneys for Plaintiffs.

TERRITORY OF NEW MEXICO, } ss:
San Miguel County, }

We do severally swear that we each have heard read the bill in equity by us subscribed, and know the contents thereof, and that the facts therein stated upon our personal knowledge are true, and those stated upon information and belief we believe to be true.

JOSÉ L. LOPEZ.
PABLO MAESE.
DIONICIO GONZALES.
JESUS M. TAFOYA.

Subscribed and sworn to before me this 1st day of February, 1899.

[SEAL.] EUGENE McELROY,
Notary Public.

Demurrer.

Filed May 2, 1899.

In the Supreme Court of the District of Columbia, This — Day of May, 1899.

PABLO MAESE, JOSE L. LOPEZ, DIONICIO GONZALES, and Jesus Maria Lafoya, Plaintiffs,
vs.
BINGER HERMANN, Commissioner of the General Land Office of the United States, and Ethan Allen Hitchcock, Secretary of the Department — of the United States, Defendants. } Equity. No. 20276.

Come now Binger Hermann, Commissioner of the General Land Office of the United States, and Ethan Allen Hitchcock, Secretary of the Department of the Interior of the United States, defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainants' bill to be true in such manner and form as the same are therein set forth and alleged, do demur to said bill of complaint upon and for the following grounds:

First. Said bill of complaint is bad in substance and for want of equity, and does not state facts sufficient to entitle the plaintiffs to the relief prayed for or to any relief.

9 Second. The court has no jurisdiction over the subject-matter of the suit.

Third. There is a defect of parties defendant.

WILLIS VANDEVANTER.
Solicitors for Defendants.

Defendants will urge as reasons for demurrer:

First. That the court cannot interfere with defendants while in the discharge of their duty as public officers in the matter of issuing the patent to said land.

Second. That the courts have no jurisdiction over the matter of issuing patents to lands.

Third. That the town of Las Vegas is a necessary party to said suit, as shown by said bill.

I hereby certify that in my opinion the foregoing demurrer is well founded in law.

WILLIS VANDEVANTER,
Solicitor for Defendants.

UNITED STATES OF AMERICA, *District of Columbia,* } ss:

Ethan Allen Hitchcock, who, as Secretary of the Interior, is one of the defendants in the above-entitled suit, being sworn, on oath says that the foregoing demurrer is not interposed for delay.

ETHAN ALLEN HITCHCOCK.

Subscribed and sworn to before me this 2nd day of May, A. D. 1899.

[SEAL.]

W. BERTRAND ACKER,
Notary Public in and for D. C.

Decree, &c.

Filed January 4, 1900.

In the Supreme Court of the District of Columbia.

PABLO MAESE ET AL. vs. BINGER HERMANN ET AL. } Equity. No. 20276.

On this 4th day of January, nineteen hundred, the above-entitled cause came on to be heard upon the demurrer of the defendants to the bill of complaint herein, and after argument of counsel pro and con and due consideration thereof by the court said demurrer is sustained, and the complainants in open court declining to amend their bill of complaint, but standing upon the bill as filed, it is ordered by the court that the said bill of complaint be, and the same is hereby, dismissed at the cost of the complainants.

Thereupon the complainants in open court pray an appeal to the next term of the Court of Appeals of the District of Columbia,
10 which is by the court granted upon complainants entering into bond in the sum of two hundred dollars conditioned and payable according to law.

A. B. HAGNER,
Asso. Justice.

Opinion of Hagner, Justice.

Filed January 11, 1900.

In the Supreme Court of the District of Columbia.

PABLO MAESE ET AL.
v.
BINGER HERMANN ET AL. } Equity. No. 20276.

This bill was filed by Pablo Maese, José L. Lopez, Dionicio Gonzales, and Jesus Maria Tafoya, in behalf of themselves and of other descendants of the original grantees, to obtain an injunction to restrain the authorities of the General Land Office from issuing to the town of Las Vegas a patent for 496,446.96 acres of land in San Miguel county, in the Territory of New Mexico, comprising what is known as the Las Vegas grant, and also to obtain a decree directing those officials to issue a patent for all these lands to the complainants.

The circumstances connected with the controversy may be detailed as follows:

On the 20th of March, 1835, Juan de Dios Maese and three others, for themselves and in the name of twenty-five men, presented a petition to the corporation of El Bado, in the Territory of New Mexico, then belonging to the Mexican Republic, praying for a grant of lands which they described as a vacant and uncultivated piece of land commonly known by the name of Las Vegas, which they solicited for the purpose of planting a moderate crop and for pasture and watering places, and contained within certain designated boundaries. The application was approved by officials called "the territorial deputation," with the conditions that the lands were to be granted not only to the petitioners, but generally to all persons who were destitute of lands to cultivate, and that the pasture and watering places should be free to all. Shortly afterwards the grant was approved by the governor of the Territory, who inserted in his order of approval the suggestion that the proper official should select a site for a town to be built by the inhabitants, and should place them in possession of the described lands. The constitutional justice, in his report of the 6th of April, 1835, set forth his proceedings in execution of the governor's order, among other things, stating that he had arranged that the wall surrounding the town was to be constructed by the individuals to whom land had been allotted.

The treaty of Guadalupe Hidalgo of the 30th of May, 1848, under which the Territory was ceded to the United States, recognized the validity of all Mexican grants within the ceded Territory, with their legal value under the laws of that Republic.

11 With a view of adjusting such claims to lands within the Territory, Congress, by section 8 of the act of July 22, 1854 (10 Statutes, 309), provided that the surveyor general of New Mexico should ascertain upon full examination the origin, nature, character

and extent of all claims within the Territory originating before the cession to the United States, and report the same, with his decision as to their validity or invalidity, and showing the extent and locality of all pueblos existing thereon, which report, in such form as should be prescribed by the Secretary of the Interior, should be laid before Congress for such action thereon as might be deemed just and proper, with a view to confirm *bona fide* grants and give full effect to the treaty of 1848.

On December 18, 1858, the surveyor general transmitted to the Secretary his report, accompanied by a list (marked Exhibit A) of nineteen claims, described by him as "private land claims and town-site grants in New Mexico, as approved or rejected by the surveyor general of said Territory, submitted for the final confirmation of Congress."

The list described the claims by their numbers, and gave to each the name of the respective claimants. The first named was designated as No. 20, and the names of the claimants to the lands therein referred to were given as "town of Las Vegas and Thomas Baca *et al.*" The report declared that each of these conflicting claims was valid in form and for the identical land—the grant to Baca antedating by about ten years that made under the petition of Maese and his associates—so that in the absence of one the other would be good and sufficient; and with this explanation he submitted the claims to Congress for its action in the premises.

The report was laid before Congress by the Secretary of the Interior, which, by the act of 21st June, 1860 (12 Statutes, 71), enacted "that the private land claims in the Territory of New Mexico, as recommended for confirmation by said surveyor general in his reports and abstract marked Exhibit A, as communicated to Congress by the Secretary of the Interior in his letter dated the third of February, eighteen hundred and sixty, and numbered from twenty to thirty-eight, both inclusive, be, and the same are hereby confirmed, with the exception of the claim numbered twenty-six, in the name of Juan B. Vigil, which claim, numbered twenty-six, is not confirmed."

The representatives of the Baca claim to the Las Vegas grant having signified their willingness to relinquish their older title in favor of the settlers if allowed to enter an equivalent number of acres elsewhere in the Territory, and the recommendation of the Senate Committee on Private Land Claims that this offer should be accepted having been approved by Congress, it was provided in sec. 6 of the act that the Baca claimants should be allowed to enter an equal quantity of land elsewhere in the Territory in consideration of their relinquishment, and this arrangement, it is conceded, was effected. Thus the confirmation of claim number twenty inured only and conclusively to the benefit of the only other claimant,
12 "the town of Las Vegas," with the qualification expressed in section 4 of the act, "that the foregoing confirmation shall only be construed as quitclaims or relinquishments, on the part of the United States, and shall not affect the adverse rights of any other person or persons whomsoever."

By section 2447 of the Revised Statutes of the United States (22d December, 1854, 10 Statutes, 599), it is provided that—

In case of any claim to land in any State or Territory which has heretofore been confirmed by law, and in which no provision is made by the confirmatory statute for the issue of a patent, it may be lawful, where surveys for the land have been * * * made, to issue patents for the claims so confirmed, upon the presentation to the Commissioner of the General Land Office of plats of survey thereof, duly approved by the surveyor general of any State or Territory, if the same be found correct by the Commissioner. But such patents shall only operate as a relinquishment of title on the part of the United States, and shall in no manner interfere with any valid adverse right to the same land, nor be construed to preclude a legal investigation and decision by the proper judicial tribunal between adverse claimants to the same land.

As the act of 1860 had made no provision for the issue of a patent, and the surveys of the tract approved by the surveyor general in December, 1860, had ascertained its area, on the 17th of December, 1898, a petition was filed in the name of the town of Las Vegas praying for the issue of a patent for the tract thus confirmed. A petition was also filed in behalf of the present complainants, claiming to be the descendants of the grantees in the Mexican grant of 1835, in which they insisted the patent should be refused to the town of Las Vegas, but should issue to them as such descendants. After argument before the Land Office and the Secretary of the Interior, Mr. Ryan, the acting Secretary, denied the application of the petitioners last named and ordered that the patent should issue to the town of Las Vegas.

The bill before the court narrates the history of the controversy substantially as hereinbefore set forth and charges that the Secretary of the Interior and the Commissioner of the Land Office, unless restrained by the court, will issue the patent as directed in the order of Acting Secretary Ryan, in violation of law and to the irreparable injury of the complainants, and prays that they may be enjoined from issuing a patent for said lands, naming the town of Las Vegas as patentee therein, or in any way whereby any title thereto may be conveyed to or vested in said town or to any other person except the complainants, and that said officials may be directed to issue patent for all said lands to the complainants.

The Secretary of the Interior and Commissioner of the General Land Office interposed a general demurrer to the bill, and the case has been heard upon this state of the pleadings.

The first question arising is as to the jurisdiction of the court to grant the injunction.

It is contended by the complainants, that however the case might stand upon the authorities, if it were on hearing upon con-
13 troverted statements, yet the admissions of the demurrer render such decisions inapplicable.

The particular averments of the bill which are thus relied on are that at the time the grant was issued in 1835 there was no collection of people having any legal or corporate existence under the

laws, customs, or usages of the Republic of Mexico residing upon any location or settlement designated as the town of Las Vegas, established either on said grant or elsewhere, which under or by virtue of any law, custom, or usage in force in Mexico could take or acquire title to lands; that the grant was not made to any town by the name of Las Vegas or by any other name; that no such town ever petitioned the surveyor general to investigate the validity of the grant, and that the only petition for that purpose was preferred by individuals representing the original grant to Maese and his associates and was confirmed by Congress to such original grantee and his associates; that there was not, on 17th December, 1898, any town in the United States of the name of Las Vegas, having any legal or corporate existence or boundaries, that could take any title, equitable or legal, in any lands and that no such town existed at the time of the cession by Mexico or at the time of the confirmation by the act of 1860; and they insisted that any patent that might be issued to the town of Las Vegas would be void in law because of these incapacities and disabilities.

Does the demurrer admit the truth of these averments?

The rule that a demurrer operates as an admission of facts properly pleaded in a bill applies only to such matters as are material, relevant, and which are set forth with legal certainty.

It is also settled that if any repugnancy appears between averments in the bill respecting the contents of a paper and the statements in the instrument itself appearing in the record the latter will prevail, and the demurrer cannot be held to admit the truth of the averments in the bill—99 U. S., 45, U. S. *v.* Ames; and, further, that arguments and inferences from alleged facts are not admitted by a demurrer, unless the facts and circumstances set forth are sufficient to sustain the allegations.

Thus in Dauphin *v.* Key, —, McArthur *v.* Mackey, p. 206, the complainant's averments that he was engaged in a lawful and legitimate business, and not in one illegal and fraudulently conducted by means of false or fraudulent pretenses, promises or representations, were each held to involve a conclusion of law, and to present at least mixed questions of law and fact, and therefore could not be considered as admitted by a demurrer.

And in Smith *v.* Reynolds, 9 Appeals D. C., 272, the court said: "All facts properly alleged are admitted by the demurrer, but not all the legal conclusions that the pleader may have drawn therefrom. The legal construction of the matters of fact alleged is exclusively for the court. And so the construction and effect of all acts of Congress involved is for the court, and also the official acts of Government agents and officers acting thereunder."

14 The point here presented by the complainant is analogous to the familiar principle that an obligor is estopped to deny the recitals in his bond; but the application of that rule depends upon the character of the recital. Thus is Tucker *v.* State of Maryland, 11 Maryland, 322, where a suit was brought upon a bond conditioned for the prosecution of an appeal "to the next county court of Anne Arundel county" (the county courts having

been previously dissolved by a change in the constitution), the Court of Appeals, in deciding that the doctrine of estoppel could not apply, said: "Whether a court exists or not is something more than a mere question of fact, as to which parties may agree or be concluded by admissions. It must depend upon the constitution or laws, and when the court can see that the supposed tribunal is not known to these, it must so decide, no matter what the parties may have admitted by estoppel or agreement."

All the acts of Congress relied upon by either side of this controversy are public statutes, of the contents of which the court must take judicial notice, as it will of the statements contained in and accompanying the official reports referred to in the bill and which form indispensable parts of the history of the case.

1 Greenleaf on Evidence, secs. 4, 6, 479.
3 " " sec. 270.
12 Am. and Eng. Ency., "Judicial notice."

And should there be an averment of fact in a bill in opposition to facts which the court is bound to notice judicially, it will, upon demurrer, be treated as a nullity.

1 Daniel's Practice, 1 Amer. ed. (23–'4).

The complainants must be considered as having vouched into this cause by their bill not only all the statutes, but also all official reports and documents emenating from Government officials, relied upon by them as supporting their case. Unless this is to be assumed by the court, the bill might have been held defective as not presenting that full and candid statement of the facts which is positively required in applications for injunctions, and it would have been justified in sustaining the demurrer, under our equity rules 9, because of their omission to file such documents with their bill.

3 App., 222, Cammack *v.* Carpenter.

The counsel on each side in their arguments, oral as well as written, have acted upon this assumption without objection by the court, and they read at large from the reports of the surveyor general and of the Senate committee and from the various orders of the Land Office and Department of the Interior, with the numerous exhibits accompanying them, as published by Congress. On examination, a striking disagreement appears between the averments of the bill that there never existed such a political or geographical entity as the town of Las Vegas capable of holding any property and the proof contained in these documents and reports.

In such a state of case the court must adopt its own interpre-
15 tation of the documents in preference to the construction sought to be placed upon them by the averments of the complainants.

It appears from these documents that when Juan Antonio Cabeza de Baca, in 1825, presented his application for a grant of these lands by the name of Las Vegas Grandes, he produced proof that his father, Don Luis Maria de Baca, in behalf of himself and his seven-

teen sons, had made a similar application for the lands by that name in 1821, which was ordered by the proper authorities; that it was occupied under the name of Las Vegas by settlers as early as 1821; that the alleged ancestors of the complainants, in 1835, applied for and received under the circumstances and conditions hereinbefore stated the grant of these lands by the name of Las Vegas; that on the 6th of April, 1830, Jose Ulibarri, constitutional justice, certified that on the preceding 29th of March he had assigned parcels of said grant to thirty-one persons, named in a list appended, who then were occupying the lands thus assigned to them in the settlement called "Our Lady of the Sorrows of Las Vegas," in which appear the names of Juan de Dios Maese and Manuel Duran, two of the petitioners for the grant; that José Antonio Cassaos, another of the petitioners, as secretary of the territorial deputation of San Miguel del Bado, signed one of the official orders securing the grant, and that the fourth petitioner, Miguel Archuleta, was one of the persons named in a further list of such assignees and settlers, 142 in number, on the lands described as being in "Vegas" and "the town of Vegas," which document the said Juan de Dios Maese, then a justice of the peace, certified should "be attached to the general grant made to Las Vegas in order that it may so appear and for security in all time to come;" that the surveyor general, in his report of 1858, described the claim and reported in favor of its validity as that of the "town of Las Vegas," accompanying his report with the petition of Lopez and others who claim in sympathy with the complainants under the grant of 1835, describing themselves and a large number of other citizens as "residents of the town of Las Vegas and its vicinity;" that the Senate Committee on Private Land Claims, after careful examination of the subject, recommended the confirmation of the claim, as suggested by the surveyor general, to "the town of Los Begas," or Las Vegas, as it was also described; that the confirmation by Congress was of the claim as described by the surveyor general, viz., to "the town of Las Vegas," and that Congress also, in the 6th section of the law of 1860, provided that the land to be given to the heirs of Baca for the relinquishment of their claim should be an equivalent for the lands in "the town of Las Vegas."

Further, in determining how far the averment of the bill that no such settlement as the town of Las Vegas now exists is consistent with the sources of information that may properly be considered, the court is at liberty to take judicial notice of a variety of things not actually vouched into the case, as the civil divisions of States, as shown by maps and geographical works of general notoriety and approved authority, into counties and towns (12 Am. and Eng. Ency., "Judicial notice," sec. 14, and notes, pp. 169 *et seq.*), the reports
16 of the General Post-Office and Government documents, stating the population of towns and cities, as shown by the national census, as well as the surveys executed under acts of Congress.

Looking at these various sources of information, we learn that the grant of Las Vegas is delineated on the map of New Mexico by Rand and McNally's Atlas, with defined boundaries, as occupying a large part of the county of San Miguel; that there are laid down on

the land two settlements, one by the name of the town of "Las Vegas," the other called "Las Vegas Springs," at each of which there is a post-office, the census return of the first showing a population above 1,500, and the other 500.

In the face of these discrepancies the court must hold the official statements thus brought to its attention to be correct, and the averments of the bill must be discarded, and consequently these objections disappear from the case.

The further objection that a patent granted to the town of Las Vegas would be void by reason of the incapacity of the proposed grantee to receive such a grant is but the statement of a conclusion of law and is unaffected by any supposed admission by the demurrer.

But the court could not decide that any such incapacity exists even if the contradictions we have found in the other parts of the case did not exist. The word "town" has different significations in different countries and in our States; in none of which it means a settlement larger than a village, but unincorporated, and in others it is the equivalent of a township and signifies a subdivision of a county, and may include large villages, which elsewhere would be called towns.

In New Mexico, under the Compiled Laws of 1884, sec. 1670, every municipal corporation having a population of 3,000 and upwards shall be considered a city and each of the population of 1,500 shall be considered an incorporated town; which last would comprehend the town of Las Vegas, according to the census returns.

In some of the documents belonging to the other grants to the different towns referred to in Exhibit A there are detailed statements of the rules laid down for the regulation of these communities that show a form of corporate government well capacitated to receive and administer such grants for the benefit of the inhabitants.

"The Meadows" is not an unusual name for a settlement in this country. There are some half dozen post-offices of that name, and a much larger number altered by prefixes and additions. For a hundred years, perhaps, there has been a settlement within twelve miles of the Capitol, in Prince George's county, Maryland, known as the "Old Fields." I see no reason why a grant to the village by that name by Congress would not be an adequate authorization to the community to hold the title and administer its management.

Whatever peculiarities such a subdivision of territory within New Mexico may possess, they evidently do not render it incapable of taking lands. In the abstract A presented with the report of the surveyor general, eleven out of the nineteen claims therein
17 reported are designated by the name of "town;" and on the report and recommendation of the surveyor general the titles to these towns, respectively, were confirmed by the act of Congress.

If the patent that may be issued in this case is to be held void for the reason stated, the same result would happen in each of the other ten grants to the towns therein named. This I cannot suppose would be just or equitable. The title, as it appears to them, thus communicated to all the other towns would properly be held by them for the

benefit of such of the settlers upon the lands as should show themselves the rightful beneficiaries under the circumstances attending the award of the grants.

In 138 U. S., 656, San Francisco *v.* Le Roy, it appeared that the land claimed by the private suitor was within the territory held by the Mexican pueblo of San Francisco at the time the State was occupied by the forces of the United States. "It was the law of Mexico," said Justice Field, speaking for the court, "that pueblos or towns, when once recognized by public authority, became entitled, for their benefit and that of their inhabitants, to the use of lands constituting the site of such pueblos or towns, and adjoining territory to the extent of four square leagues, to be measured off and assigned to them by officers of the Government." Under these laws the pueblo of San Francisco asserted a claim to four square leagues, and the alcaldes and other Mexican officers from time to time distributed small parcels of the land to the inhabitants for building purposes, and the United States officers, after we took possession, in place of the Mexican officials, exercised the like authority. After the incorporation of the city, a confirmation to it of the pueblo lands was decreed by the courts. This the Supreme Court decided was to the city, "in trust for the benefit of the lot-holders under grants from the pueblo, town, or city of San Francisco or other competent authority, and as to any residue in trust for the benefit of the inhabitants of the city."

Whether this ruling is applicable to the present case it is not for this court now to decide; but surely there would be a stronger probability of accomplishing the equitable adjustment there suggested by the Supreme Court, by confirming the title to the town, which was authorized by Congress to receive it, than if the title should be committed to private individuals, to whom Congress had never directed it to be granted.

The case, when relieved of the supposed difficulties claimed to result from the alleged admissions by the demurrer, is free from difficulty.

Congress in confirming this claim of the town of Las Vegas had made no provision in the confirmatory act for the issue of the patent.

The several duties required to be performed in advance by the surveyor, the surveyor general, and the Commissioner of the General Land Office having been performed by those officials, after the exercise by them of whatever official judgment properly belonged to the duty of each in his official sphere, nothing remained to be done except to issue the patent for the lands thus confirmed.

18 As Congress by this remedial statute evidently intended to impose a duty upon the Commissioner, instead of creating a privilege only, respecting a matter in which the public was so deeply concerned, and in which third persons are entitled to claim the exercise of the power, the words "*it may be lawful*" to issue patents are as mandatory as though the word "*shall*" had been inserted in the clause, or the officer had been "*directed*" to perform the duty, as was the language in Kendall *v.* U. S., 12 Peters, 524; and he would have

been as amenable to a writ of mandamus compelling him to obey the law as the Postmaster General was in the case referred to.

How is it possible, then, for this court to grant an injunction prohibiting him to perform a plain duty which the legislature has imposed upon him, and which he has declared he is willing and ready to discharge?

This question, I conceive, has been conclusively settled by the decisions of the Supreme Court. In 93 U. S., 662, Tameling *v.* U. S., the court, construing this very statute, declared: "No jurisdiction over such claims in New Mexico was conferred upon the courts, but the surveyor general in the exercise of the authority with which he was invested decides them in the first instance. The final action on each claim is reserved to Congress, is, of course, conclusive, and therefore not subject to review in this or any other form." * * *

"The invalidity of the grant has been earnestly and elaborately pressed upon our attention. This was matter for the consideration of Congress, and we deem ourselves concluded by the action of that body. The phraseology of the confirmatory act is, in our opinion, explicit and unequivocal" (p. 663).

In 121 U. S., 366, Maxwell Land Grant case, the court against construing the acts of July, 1854, and of June 21, 1860, quoted the above language and affirmed the decision as in the case of Tameling. In the latter case of Astiazaran *v.* Santa Rita Mining Co., 148 U. S., 83, the court, after citing the two foregoing decisions, says: "The action of Congress, when taken, is conclusive upon the merits of the claim, and if Congress should confirm it, its decision would control."

The objection made by the defendants that the bill is fatally defective because the town of Las Vegas was not made a party defendant is not well taken. Though the suit might have been sustained if the town had been made a party, yet it is not an indispensable or necessary party. The decision of this cause in behalf of the town of Las Vegas can operate only as a relinquishment of title on the part of the United States, but does not conclude the valid adverse rights of third parties. If the court were to command the patent to be issued to the complainants, the rights of the town of Las Vegas "to demand a legal investigation and decision by the proper judicial tribunal between adverse claimants to the same land" are especially reserved by section 2447 R. S. U. S., and the right of the complainants to demand such an investigation after the present decision in favor of the town of Las Vegas is equally reserved, and the same security is preserved by sec. 4 of the act of 21st June,
19 1860 (12 Stat., 71), which declares that the confirmations shall be construed as quitclaims or relinquishments on the part of the United States and shall not affect the adverse rights of any other person or persons whatsoever.

I shall sign a decree refusing the relief prayed in the bill and sustaining the demurrer.

A. B. HAGNER,
Asso. Justice.

January 4th, 1900.

Memorandum.

January 24, 1900.—Appeal bond filed.

Order for Preparation of Record.

Filed January 24, 1900.

In the Supreme Court of the District of Columbia, the 24th Day of January, 1900.

PABLO MAESE ET AL.
vs.
BINGER HERMANN ET AL. } Equity. No. 20276.

The clerk of said court will please make up the record in the above-entitled cause for the Court of Appeals, and will include in the record only the original bill and the demurrer and the decree dismissing bill and the written opinion of the justice.

H. C. BURNETT,
FRED BEALL,
Attorneys for Plaintiffs.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the above and foregoing pages, numbered from 1 to 34, inclusive, to be a true and correct transcript of the record, as per directions of counsel for appellant filed in this cause and made part hereof, in cause No. 20276, equity, wherein Pablo Maese *et al.* are complainants and Binger Herman, Commissioner of the General Land Office of the United States, *et al.* are defendants, as the same remain upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 3 day of February, A. D. 1900.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 971. Pablo Maese *et al.*, appellants, *vs.* Binger Herman, Commissioner, &c., *et al.* Court of Appeals, District of Columbia. Filed Feb. 27, 1900. Robert Willett, clerk.

20 WEDNESDAY, *April 11th, A. D.* 11th 1900.

PABLO MAESE, JOSÉ L. LOPEZ, DIONICIO GONZALEZ, Jesus Maria Tafoya, Appellants,
vs.
BINGER HERMAN, Commissioner of the General Land Office of the United States, and Ethan Allen Hitchcock, Secretary of the Department of the Interior of the United States. } No. 971.

The argument in the above-entitled cause was commenced by Mr. Fred Beall, attorney for the appellants.

THURSDAY, *April 12th, A. D.* 1900.

PABLO MAESE, JOSÉ L. LOPEZ, DIONICIO GONZALEZ, Jesus Maria Tafoya, Appellants,
vs.
BINGER HERMAN, Commissioner of the General Land Office of the United States, and Ethan Allen Hitchcock, Secretary of the Department of the Interior of the United States. } No. 971.

The argument in the above-entitled cause was continued by Mr. Fred Beall, attorney for the appellants, and by Mr. Assistant Attorney General Van Devanter, attorney for the appellees, and was concluded by Mr. H. C. Burnett, attorney for the appellants.

21 PABLO MAESE, JOSÉ L. LOPEZ, DIONICIO GONZALEZ, Jesus Maria Tafoya, Appellants,
vs.
BINGER HERMAN, Commissioner of the General Land Office of the United States, and Ethan Allen Hitchcock, Secretary of the Department of the Interior of the United States. } No. 971.

Opinion.

Mr. Chief Justice ALVEY delivered the opinion of the court:

The bill in this case was filed in the supreme court of the District of Columbia, by Pablo Maese, Jose L. Lopez, Dionicio Gon-
22 zales, and Jesus Maria Tafoya, against Binger Herman, Commissioner of the General Land Office of the United States, and Ethan Allen Hitchcock, Secretary of the Department of the Interior of the United States, in their respective official capacities, for the purpose of obtaining an injunction to restrain the defendants from issuing a patent for the land embraced in the Mexican land grant, known as the Las Vegas grant, to the town of Las Vegas, situate and located in the Territory of New Mexico, and for a decree directing said defendants to issue a patent for said lands, the extent or quantity thereof being 496,466.96 acres, to the grantees named in the grant, their heirs, legal representatives and assigns, in their own right and as their own absolute property.

The complainants allege in their bill that they are citizens of San Miguel county, in the Territory of New Mexico, and reside on what is known as the Las Vegas land grant, situated in that county, and that they bring this suit in their own right as heirs of the original grantees of said grant, and on behalf of all the other heirs and assigns of the original grantees of said grant who now have any interest therein and who have a common interest with the complainants, and who will bear their *pro rata* shares of the costs of this suit. They further allege that all the heirs and assigns of the original grantees in and to said grant are too numerous to be made parties by name.

Before proceeding to state the particular allegations of the present bill, it may be proper to state that a bill in equity asking an injunction against a former Secretary of the Interior Department and the then Commissioner of the General Land Office, to restrain those officials from an attempted or threatened action with respect to the lands embraced in the Las Vegas grant, has been before this court on a former occasion for consideration. That was a bill filed by Jefferson Raynolds for himself and the other inhabitants of the town of Las Vegas, and of the Las Vegas grant, and by the town of Las Vegas, against the Hon. Hoke Smith, Secretary of the Interior Department, and the Commissioner of the General Land Office, praying an injunction to restrain the execution of an order for the survey of the land embraced in the Las Vegas grant, or from in any manner treating the land included therein as part of the public domain. On demurrer to the bill, the court below held the parties entitled to the relief prayed, and granted the injunction; and this court, on appeal, affirmed the decree. Smith *v.* Raynolds, 9 App. D. C., 261. And from that decree of affirmance an appeal was taken to the Supreme Court of the United States, but before the case could be disposed of on its merits in that court, Secretary Smith retired from office; and under the law as it then stood (but since changed,) the court, following the authority of the preceding case of Warner Valley Stock Co. *v.* Smith, 165 U. S., 28, held that the case abated, and that the bill should be dismissed for want of proper parties. Smith, Secretary, etc., *v.* Raynolds, 166 U. S., 717.

We refer to that case more particularly as containing the facts and history of the grant of Las Vegas, the conflicting claim made in respect thereof under the treaty between the United States and the Republic of Mexico, and the proceedings in regard thereto under the act of Congress of July 22, 1854, and the subsequent confirmation of the claim of the town of Las Vegas, by the act of Congress of June 21, 1860.

The present bill proceeds upon the theory and claim that the grant of Las Vegas was of a purely private nature; that the grant was to certain individuals, and the right to the land became vested in them as their individual property, exclusive of all communal rights; and that the heirs, descendants, representatives and assigns of the original grantees are entitled to a patent for the land, notwithstanding the claim by, and the confirmation of that claim to, the town of Las Vegas, by the act of Congress of June, 1860.

The complainants, by their bill, allege that, by the law, it is made the duty of the Commissioner of the General Land Office to issue a patent to the grantees of all private land grants which have been confirmed by Congress, and that said Commissioner is, under the law, required to issue patents for all such confirmed private land grants to the grantees named in the original grant, their heirs or assigns, and in the discharge of his duty therein he has no judicial or discretionary power, but acts ministerially alone in the issuing of such patents. It is then alleged that, by the confirmatory act of Congress, the Las Vegas grant was declared to be valid, and that the Government of the United States had acquired no right or title to the lands therein embraced, and that the Land Department of the Government had no such jurisdiction over the same as would authorize the officials of that department to adjudicate or determine the question as to whom a patent should of right issue for said land embraced in the grant.

The complainants further allege that all the original grantees named and designated in the grant have died, and that they each and all died seized and possessed in common of said lands, except possibly in some instances some of the original grantees had purchased the right, title and interest of some of their cograntees in said land; and they further aver and charge that they and those whom they represent herein are all either heirs of the original grantees, or hold title to said lands by conveyances, mediate or immediate, from original grantees of said lands, and that, as heirs and assigns of the original grantees, *they are the true and real owners in fee absolute of all of said lands, and as such are entitled to have a patent issued to them for all of said lands.*

It is then alleged that, on December 17, 1898, upon a petition filed in the Interior Department of the United States, praying that a patent be ordered to be issued to the town of Las Vegas for all the land included in said Las Vegas grant, the Hon. Thomas Ryan, the then Acting Secretary of the Interior Department, addressed a letter to the Commissioner of the General Land Office, whereby said Interior Department ordered and directed the Commissioner of the General Land Office to issue a patent for said lands to the town of Las Vegas, which order still remains and continues in full force and effect.

23 Said complainants further allege, that they are informed and believe, and so charge as a fact, that at the date of the making of the said Las Vegas grant by the Mexican officials, there was no place of collection of people having any legal existence, under the laws, customs, or usages of the Republic of Mexico, or of the Territory of New Mexico, known or designated as the town of Las Vegas, nor was there any town by name of Las Vegas on said grant, or elsewhere, at that time, which, under the laws in force at that time in the Territory of New Mexico, had any legal or corporate existence, or which, under or by virtue of any law, custom, or usage, in force in New Mexico, could take or acquire title to lands. And they further allege and charge that said land grant was not made to any town by name of Las Vegas, or by any other name;

that the town of Las Vegas did not, nor did any other town ever petition the surveyor general of New Mexico to investigate the nature, character, extent, or validity of said grant, and that the only petition ever preferred to any surveyor general for such an investigation touching said grant was preferred by individuals representing the original grantees, Maese and others, their heirs and assigns. That said surveyor general reported that said grant was made in due form to said Maese and his associates, and was to them a valid grant; and that said grant was duly and legally confirmed by Congress to the original grantees, and that it was not confirmed to a town by the name of Las Vegas, or to any other town. That complainants are informed and believe, and therefore charge, that there was not, on December 17, 1898, any town by the name of Las Vegas anywhere in the United States having any legal or corporate existence, or any defined boundaries, or that could take or acquire title, either equitable or legal, to any lands whatever; and further, that there was not at the time of the cession of the country, included in the Territory of New Mexico, to the United States by the Republic of Mexico, or at the time of the confirmation of the Las Vegas grant by Congress, any such town having any legal or corporate existence, or having any defined boundaries, or any place by that name, capable in law of acquiring or holding title, either legal or equitable, to the lands included within the Las Vegas grant. And they further charge that they are advised, and so believe, that if a patent be issued to the town of Las Vegas the same would be void, for the reasons hereinbefore stated; and they charge that notwithstanding the facts before stated, the said Commissioner of the General Land Office, under the order and direction of the Interior Department, will issue the patent to the said town of Las Vegas, if not restrained from so doing by the court. They charge that a patent so issued would cast a cloud and a suspicion upon their title and the title of those interested with them, and would result in irreparable injury to them all.

The bill prays for an injunction against the defendants, to restrain them from issuing a patent for said lands to the town of Las Vegas; or, if such patent has been issued, that the same be declared void and of no effect; and that said defendants be ordered and decreed to issue a patent for said lands to the complainants and those having an interest in common with them in said lands.

The defendants appeared and entered a demurrer to the bill, and stated as grounds for the demurrer (1) the want of jurisdiction in the court to grant the relief prayed, or any part thereof; (2) the want of necessary parties to the bill; and (3), that, upon the facts stated in the bill, there is no ground of relief shown—the complainants having no such vested and exclusive rights in the lands as entitle them to a patent therefor.

The court below sustained the demurrer and dismissed the bill; and the complainants have appealed.

Before proceeding to examine and determine the several grounds of demurrer, it would seem to be proper to state in a preliminary way the general principles as to what is and what is not admitted

to be true by the demurrer to the bill; and of what matters and facts the court will take judicial notice without the introduction of formal proof thereof.

It is a well-settled principle in the law of demurrer, that while the demurrer admits as true, for the purposes of the decision invoked by it, all facts well and sufficiently pleaded, yet it does not admit as true mere matters of law which the pleader may think proper to state in his pleadings, nor the conclusions drawn from the facts stated therein. That is for the court exclusively. Nor does the demurrer in any manner admit the correctness of an allegation as to the construction of a statute, or of a grant, or other document, or official act, that may be insisted upon by the pleader, as the foundation of his claim and title, or that may be set up in opposition thereto. That is matter of law for determination by the court. These propositions are too clear to require citation of authority for their support.

And as to the question of what the courts will take judicial notice, it is settled by express authority, that the courts of the United States are bound to take judicial notice of the laws and regulations of Mexico existing prior to and at the time of the cession to this Government of the Territory of New Mexico, by the treaty of Guadalupe Hidalgo, in 1848. United States *v.* Chaves, 159 U. S., 452. And they must also take judicial notice of the facts concerning the land grants by Mexico, which are recited in acts of Congress, and in the records of the General Land Office, or the Department of the Interior. Knight *v.* U. S. Land Association, 142 U. S., 161. In regard to the Las Vegas grant, that has been the subject of both departmental and congressional action. It has been the subject of investigation by the surveyor general of New Mexico, under the act of Congress of July 22, 1854, and by his report was made a subject of record in the General Land Office, from whence it was placed before Congress, and by that body was confirmed by the act of June 21, 1860, by special designation. It has since been repeatedly the subject of official action in the Land Department of the Government. With such publicity and official action in regard to the grant, the grant itself and the facts attending it, are matters of which the courts must take judicial notice.

24 1. With respect to the first of the questions raised under the demurrer, that of the want of jurisdiction of the court over the subject-matter of the bill, in view of the provision of the statute law, and the repeated decisions of the Supreme Court, upon the subject, no very extended discussion of the question is required of this court. By section 2447 of the Revised Statutes of the United States, it is declared and provided, that in case of any claim to land in any State or Territory which has heretofore been confirmed by law, and in which no provision is made by the confirmatory statute for the issue of a patent, it may be lawful, where surveys have been made, to issue patents for the claims so confirmed, upon the presentation to the Commissioner of the General Land Office, of plats, etc., *if the same be found correct by the Commissioner.* "But such patents shall only operate as a relinquishment of title on the part of

the United States, and shall in no manner interfere with any valid adverse right to the same land; nor be construed to preclude a legal investigation and decision by the proper judicial tribunal between adverse claimants to the same land."

It is alleged in the bill, as we have seen, that the defendants, in the execution of the functions of their office in the Department of the Interior, are about to issue, or have determined to issue, or, it may be, have issued, a patent to the town of Las Vegas for the land included in the Las Vegas grant, and have refused to issue a patent to the complainants and their associates for said land. And the question is, has a court of equity the power and jurisdiction to restrain this proposed or intended action of one of the executive departments of the Government, and to order the patent to be issued to the complainants? In other words, has a court of equity the power and jurisdiction to control and direct the executive Department of the Interior in the matter of adverse claims to a patent for land, where there has been a confirmation by act of Congress, without directing to whom a patent should issue? The confirmatory act of 1860, makes no provision for the issuing a patent, though it in terms confirms the claim for the land to the town of Las Vegas.

There are many things to be determined as preliminary to issuing a patent. The officer intrusted with the power must determine whether there has been a confirmation, and, as in this case, where there are conflicting claims, to which of the parties claiming the patent the confirmation by act of Congress applies. He must also determine all questions as to the accuracy and validity of the survey, and as to all the conditions upon which the patent can rightfully issue. That being the case, can a court of equity draw all these questions to itself for determination, and thereby exclude the executive department of the Government from the exercise of the function and duty expressly delegated to it by statute? We think not.

This question has been the subject of repeated adjudication by the Supreme Court of the United States, and it has been uniformly held that the courts will not interfere, either by mandamus or injunction, with the exercise, by the executive officers, of duties requiring judgment or discretion. In the case of Litchfield *v.* The Register and Receiver, 9 Wall., 575, this principle was applied to the register and receiver of the land office. That was a case quite analogous to the present, though in some of its facts not so strong for the application of the principle as the present case. The bill was filed against the register and receiver of the land office at Fort Dodge, asking an injunction to restrain them from entertaining and acting upon applications made to them to prove pre-emptions to certain lands which lay within the land district for which they were respectively register and receiver. The defendants demurred to the bill, and the bill was dismissed for want of equitable jurisdiction. The case was taken to the Supreme Court, and that court, speaking by Mr. Justice Miller, said: "The principle has been so repeatedly decided in this court that the judiciary cannot interfere, either by mandamus or injunction, with executive officers such as the respond-

ents here, in the discharge of their official duties, unless those duties are of a character purely ministerial, and involving no exercise of judgment or discretion, that it would seem to be useless to repeat it here. In the case of Gaines *v.* Thompson, 7 Wall., 347, decided at the last term of this court, the whole subject was fully considered, and the cases in this court examined. The doctrine just stated was announced as the result of that examination. The case of The Secretary *v.* McGarrahan, decided at the present term, 9 Wall., 298, reaffirmed the principle which must now be considered as settled. Both these cases had reference to efforts similar to the present, to control the officers of the Land Department."

Further on in the opinion, the learned justice said: "The very first duty which the register is called upon to perform, when an application is made to him to enter a tract of land, is to ascertain whether it is subject to entry. This depends upon a variety of circumstances. Has there been a proclamation offering it for sale? Has it been reserved by any action of Congress, or of the proper department? Has it been granted by any act of Congress, or has it been sold already? These are all questions for him to decide, and they require the exercise of judgment and discretion. The bill shows on its face that these officers, in the exercise of this duty, were considering whether the reservations of the departments and the act of Congress, and the claim of the plaintiff under them, took these lands out of the category of lands subject to sale and pre-emption, and he asks the court to interfere by injunction to prevent them from determining that question, and that the court shall determine it for them. He says the court below erred because it did not require them to come in and answer to his claim of title, and at their own expense to put the court in possession of their views, and defend their instructions from the Commissioner, and thus convert the contest before the Land Department into one before the court. This is precisely what this court has decided that no court shall do. After the land officers shall have disposed of the question, if any legal right of plaintiff has been invaded, he may seek redress in the courts. He insists that he now has the legal title. If the Land Department finally decides in his favor, he is not injured. If they give patents to the applicants for pre-emption, the courts can then in the appropriate proceeding determine who has the better title or right. To interfere now, is to take from the officers of the Land Department the functions which the law confides to them and exercise them by the court."

The same principle is reasserted in the recent case of Brown *v.* Hitchcock, 173 U. S., 473, on an appeal taken from this court.

If it be urged that a patent is necessary to enable the complainants to assert their rights in an action at law, the answer to that contention is that it is settled doctrine, that a confirmatory statute passes a title as effectually as if it in terms contained a grant *de novo*, and that a grant may be made by law as well as by a patent issued in pursuance of law. Ryan *v.* Carter, 93 U. S., 78. And this was expressly held by the Supreme Court in respect of the confirmatory act of Congress of June 21, 1860,—the act that confirmed the Las

Vegas grant. Tameling *v.* United States Freehold, etc., Co., 93 U. S., 644, 661.

2. But assuming that there was jurisdiction in the court to take cognizance of the case as presented by the bill, it is then contended by the defendants that the bill is defective, and therefore demurrable, for want of proper and necessary parties defendants thereto. In an application to the Commissioner of the General Land Office to issue a patent under sec. 2447 of the Rev. Stats. U. S., such an objection as this, possibly, would not be entertained. But when a party comes into a court of equity for relief, he must conform to the established rules of proceeding, not only with respect to the subject-matter of the suit so as to furnish a proper foundation for the decree sought, but as to all necessary and proper parties who may be affected by the decree.

In this case, it is very clear that the present defendants have no real interest in the subject-matter of the bill. They do not represent, in any proper sense, the town or the inhabitants of the town of Las Vegas. Their standing in court is simply in their official character, without any real interest in the subject-matter of the suit. The parties in real interest, adverse to the claim of the complainants, are the town of Las Vegas and the inhabitants thereof, and they are not parties and have no representative of their interest before the court. It would certainly appear to be contrary to the first principles of right and justice to proceed to grant the relief prayed for by this bill, in the absence of all representation of those most essentially interested in resisting and defeating the claim of the complainants.

This question was raised and very emphatically decided, in the case already referred to, of Litchfield *v.* Register and Receiver, *supra*. In disposing of this question, the court said: "It appears on its face (referring to the bill), that the register and receiver have no real interest in the matter, but that, persons not named are asserting before them the legal right to pre-empt these lands. These persons are the real parties whose interests are to be affected, and whose claim of right is adverse to the plaintiff. If the court should hear the case, and enjoin perpetually the register and receiver from entertaining their applications, they have no further remedy. That is the initial point of establishing their right, and in this mode a valuable and recognized right may be wholly defeated and destroyed, without the possibility of a hearing on the part of the party interested. This is not a case in which the land officers represent these claimants. They have no such duty to perform. They might let the injunction be issued without defense, and thus a proceeding almost *ex parte* be made to strangle the incipient right of the actual settler on the public lands. If it can be done in this case, it can be done in every other in which a plaintiff is willing to proceed against the officers, without bringing the settlers on the land before the court." It was therefore held that the settlers were necessary parties.

It is alleged, however, that there is no such town as Las Vegas; or, at any rate, there is no incorporated town of that name in New

Mexico, and, consequently, there is no body or legal entity that can be made a party defendant. But the fact of the existence of the town of Las Vegas cannot be denied. It is a fact of which the court must take judicial notice. The existence of the town is recognized by the surveyor general of New Mexico, in his investigation of claims and titles to land under the act of Congress of 1854. It is also fully and repeatedly recognized in the Land Department of the Government, and by Congress in the reports of its committees, and in the act of confirmation of 1860. In addition to this, it appears on the maps of the Territory of New Mexico, and in the gazetteers of the country. And by the census returns of the United States for 1890, it is shown to be a town in San Miguel county, New Mexico, east of Santa Fé, containing, at that time, a population of 2,385 inhabitants; and was a railroad and manufacturing center.

But whether the town of Las Vegas be a municipal corporation, incorporated by virtue of statutory provision or not, is quite immaterial, so far as this case is concerned. In such case as this, it would be sufficient that such a number of the proprietors claiming under the grant embracing the town, or of those holding rights thereunder, were brought before the court, as would fairly represent the interest of all, the interests being of a common character and responsibility. This principle is established by many authorities, and is treated at large, with the citation of cases, in Story's Equity Pleading, in sections 116 to 126. Many instances are given, as where a bill was brought by the parson of a parish against some of the parish-oners to establish a general right to tithes, and the others were held to be bound by the decree in the suit. And so, where there is one general right to demand service from the individuals of a large district, as, for example, a right to demand that all the individuals of a large district should grind all the corn for their subsistence at a particular mill; in such a case the mill-owner may sue a few in equity, to establish his right against all. But so many must be joined, as will fairly and honestly try the legal right. Sto. Eq. Pl., sec. 123; Mayor of York *v.* Pilkington, 1 Atk., 282, 284; Adair *v.* New River Co., 11 Ves., 444; City of London *v.* Richmond, 2 Vern., 421;
26 Milbank *v.* Collier, 1 Collyer, 237; Att'y Gen'l *v.* Wyburgh, 1 P. Will., 599.

In view of all the facts of this case, and the terms of the confirmatory act of Congress, it would certainly not consist with any rational principle of justice that the rights of the people of the town of Las Vegas, whatever may be the nature of those rights, should be subjected to a cloud and embarrassment, and the claimants of those rights be subjected to expensive litigation, by the issue of a patent to the complainants, without an opportunity to the town and its inhabitants to be heard in vindication of their rights. We think the bill is defective for want of necessary parties, and is demurrable for that cause.

3. We might close the consideration of the case here, and affirm the decree below for the reasons we have stated. But as the case may be taken to the Supreme Court of the United States for final review, and the views we have expressed may not be concurred in, and es-

pecially as the appeal to this court was from the judgment of the court below sustaining the demurrer upon the ground that there was no right or title in the complainants that entitled them to a patent for the land, under the confirmatory act of Congress, we shall proceed to the consideration of the third ground of demurrer, which involves the question as to the rights of the complainants and those represented by them to have the patent for the Las Vegas grant issued to them, under the act of confirmation, instead of the town of Las Vegas.

A brief statement of the facts, showing the nature and condition of the grant, as made by the local officials of the Mexican government in New Mexico, would appear to be necessary to a fair understanding of the subject.

In March, 1835, a petition was preferred to the proper authorities in New Mexico for a grant of land under the colonization laws of the Republic of Mexico of 1824, and according to the regulations adopted by that government in 1828. The petition was filed by Juan de Dios Maese, Miguel Archuleta, Manuel Duran, and Jose Antonio Casaos, for themselves and in the name of twenty-five other men, stating that, having registered a vacant and uncultivated piece of land, commonly known by the name of Las Vegas, on the Gallinas river, they solicited said land for the purpose of planting crops, and to have also the necessary land for pasture and watering places, etc., with definite boundaries. They stated that they were willing to bind themselves to receive possession of the land in the name of the federation, and to comply with the reasonable and equitable conditions that might be prescribed. This application, in due course of proceeding, was laid before the territorial deputation of New Mexico; and thereupon it was resolved and ordered, that "the land contained within the boundaries expressed in this petition is granted *not only to the petitioners and the residents of El Bado but also generally to all who may be destitute of lands to cultivate;* provided, 'that the grant to these lands is made on condition that the pasture and watering places are free to all.' In view of all which, the political chief will receive the petitions made, and shall cause them to be provided for, agreeably to what has been ordered. In compliance with instructions let these original proceedings be forwarded to the political chief, who will be pleased to execute what is herein ordered by this deputation, by whose order the foregoing is done.

R. ABREU, *Secretary.* [RUBRIC.]"

Then proceeding was taken by the officials of the Territory to place the parties in possession of the land granted, under the decree of the deputation, and to award to the parties entitled portions of the land, with instructions as to their duties and liabilities under the grant; and such parties were informed and directed, "that the water and pasture were free to all, and that the joint labor should be done by themselves without any dispute, and that the wall surrounding the town marked out should be made by them all, which being done, that they notify the justice, in order that he may mark out to each one equally the portion he is entitled to."

Under the act of Congress of July 22, 1854 (10 Stat., 308), passed to give effect to the provisions of the treaty of Guadalupe Hidalgo, between the United States and the Republic of Mexico, made in 1848, there was a petition filed with the surveyor general of New Mexico, by Francisco Lopez, Henry Connelly and Hilario Gonzalez, on behalf of themselves *and a large number of citizens of the United States, residents of the town of Las Vegas, and its vicinity*, in the county of San Miguel, Territory of New Mexico, representing that they, and the citizens they represented, were the claimants and legal owners of a certain tract of land, lying, etc., which lands were granted by the provincial deputation to Maese and twenty-eight others, and to which petition was appended to the grant under which they claimed. There was also an adverse claim to the same land filed with the surveyor general, by the heirs of Luis Maria Baca, founded upon a grant prior in date to that made to Maese and others.

The surveyor general of the Territory acted upon these claims under the act of 1854; and in his report to the Commissioner of the General Land Office, he stated that: "It is firmly believed that the land embraced in either of the two grants is lawfully separated from the public domain and entirely beyond the disposal of the General Government; and that in the absence of the one the other would be a good and valid grant." But, by this report, the question of the title was referred to the proper tribunals to settle; and these claims with others, referred to in the report, were placed before Congress for its legislative action. In the Committee on Private Land Claims of the Senate, of which committee Senator Benjamin was chairman, the subject of the claims referred to in the report of the surveyor general of New Mexico was fully considered. And that committee, in a report to the Senate, in speaking of the Las Vegas grant, and the adverse claims made to the lands embraced therein, said: "Amongst the claims embraced, however, in the second report and recommendation for confirmation are two which cover the same tract of land, and are embraced in one number, to wit, No. 20. To this tract the two claimants are, first, the heirs of Luis Maria Baca, who claims
under a grant made by the provincial deputation of Durango
27 to said Baca and his seventeen male children, on May 29, 1821, etc. This grant was in fee, and is a genuine and valid title; and, second, the town of Las Vegas. This town claims under a grant made on the 25th of March, 1835, to Juan de Dios Maese and twenty-seven others by the territorial deputation on a petition which represented the land to be public land, and the petitioners were put in possession. The land has been divided out, and several hundred families are located on it.

"The surveyor general, having none but ministerial duties to perform, has recommended the confirmation of both these titles, leaving to the respective claimants the right of adjusting their conflicting claims in the courts; but Congress has other duties imposed on it, and is bound to legislate in such manner as to prevent, if possible, so disastrous a result as the plunging of an entire settlement of families into litigation, at the imminent hazard of being turned out of their homes or made to purchase a second time from

a private owner of lands for which they paid their Government a full equivalent in the labor, risk, and exposure by which they have converted a wilderness, surrounded by hostile savages, into a civilized and thriving settlement; and this can be done with little loss or cost to the Government."

The committee then proceeded to devise and report a method whereby the heirs of Baca should abandon or surrender their older and superior claim to the land, and take other lands of the Government in lieu thereof, so that the Las Vegas grant might be confirmed to the town of Las Vegas, according to the findings and recommendation of the surveyor general; and for that purpose the committee reported an amendment to the bill which had been passed by the House of Representatives and was then pending before the Senate. That amendment was adopted, and the bill as amended was passed into a law. By that law the Las Vegas grant was confirmed to the town of Las Vegas "as recommended for confirmation by said surveyor general in his report and abstract marked Exhibit A, as communicated to Congress by the Secretary of the Interior, etc., and numbered from twenty to thirty-eight, etc., with the exception of claim numbered twenty-six," etc., which was another and different claim from that of Las Vegas. By the sixth section of the confirmatory act of 1860, it was provided, that it should be lawful for the heirs of Luis Baca, "who make claim to said tract of land *as is claimed by the town* of Las Vegas, to select instead of the land claimed by them an equal quantity of vacant land, not mineral, in the Territory of New Mexico, to be located," etc. The Baca heirs accepted the terms proposed, and made their selection of other lands; and the town of Las Vegas, and the people settled within the limits of the grant of Las Vegas, were thus left in the free and undisturbed possession of the land granted to them and of their homes, with all the rights and privileges professed to be conveyed by the grant. It is manifest beyond doubt as to the purpose and intention of Congress in its action upon the subject. It was not the intention or purpose of Congress thus to provide for the extinguishment of the elder and superior title of Baca's heirs, for the benefit and protection of a few private individuals who might claim individual rights under the grant of Las Vegas, to the exclusion of all claim of the town of Las Vegas, and the inhabitants of the land within the limits of that grant. The inhabitants of the grant have remained undisturbed, and their rights unchallenged, until within a few years past, since which time their rights have been brought into question by parties who attempt to assert and maintain exclusive individual rights to the land embraced within the Las Vegas grant.

By the treaty of Guadalupe Hidalgo the United States stipulated for full and complete protection of all rights of property, perfect or imperfect, held by the inhabitants of the territory ceded, and that such rights should be secured to them, so far as such property was recognized by the laws and constitution of the new government; and for that purpose that the holders should receive from the new authorities such official and documentary evidence of their rights as would assure their full possession and enjoyment. Pueblos or

towns in that respect stood in the same position as private individuals. All their rights of property, legal or equitable, were alike entitled to protection. The confirmation of the claim of title, whatever that title might be, took effect upon the title as it existed at the time of the acquisition of the territory; and, by the subsequent confirmation, the United States recognized the validity of that title at the date of the treaty. Knight *v.* U. S. Land Asso., 142 U. S., 161, 186, 201.

As we have shown, by the recitals of the decree of the deputation of New Mexico, of March 23, 1835, the grant was not only to Maese and his associates named, in their individual rights, but was "to the petitioners and the residents of El Bado, *and also generally to all who might be destitute of lands to cultivate; provided that the grant of these lands is made on condition that the pasture and watering places are free to all.*" The parties entitled under the grant were let into possession under instruction "that they should select a site for a town to be built by the inhabitants; that the joint labor should be done by themselves without any dispute, and that the wall surrounding the town marked out should be made by them all."

Such rights as were conferred by this grant were of a communal nature, and such as are recognized by the modern civil codes of continental Europe; and especially by the laws and customs of Spain, and which have been largely recognized in the laws and ordinances adopted for the settlement and government of her colonies on this continent. Townsend *v.* Greeley, 5 Wall., 326, 336; 1 Domat, Prel., Bk. Til. 2, s. 2, art. 15, par. 111; or p. 148.

As said by the Supreme Court, speaking by Mr. Justice Field, in the case of Townsend *v.* Greeley, *supra*, "It may be difficult to state with precision the exact nature of the right or title which the pueblos held in these lands. It was not an indefeasible estate; ownership of the lands in the pueblos could not in strictness be affirmed. It amounted in truth to little more than a restricted and qualified right to alienate portions of the land to its inhabitants for building or cultivation, and to use the remainder for commons, for
28 pasture lands, or as a source of revenue or for other public purposes. This right of disposition and use was, in all particulars, subject to the control of the government of the country." It is very clear therefore, that the land embraced in the grant of Las Vegas was not intended to be assigned to Maese and his associates in absolute property, to them and their heirs, but was intended to be held by them in trust for the benefit of the inhabitants that might settle thereon. This was manifestly the view entertained and enacted into law by Congress, in confirming the right to the town of Las Vegas. This is the view entertained and officially announced and applied by the Land Department of the Government, upon more than one occasion.

In 13 Land Dec., 646, 655, Secretary Noble of the Interior Department has discussed the question of the confirmation of this grant, and to whom the confirmation was made, with great fullness and clearness. He says: "My opinion is that * * * the confirmation was made direct to the town, not only as the most convenient

form of making the confirmation and issuing a patent thereon, but because the town of Las Vegas, acting in the interest and for the benefit of its people, was the proper party to ask for and receive from Congress the relief sought. A patent for said lands should be issued to the town of Las Vegas, so that the proper parties in interest could perfect their titles to their lands. * * *

"As to the point that the town of Las Vegas, not having been incorporated, is a legal nonentity, to which no title would pass under the patent, it may be replied that, if this be true, as matter of fact and law, the consequences would be more far reaching; for Congress, in its wisdom, confirmed the grant, as shown, to the said town, and if there be no such town in existence which can take, there simply has been no confirmation of the grant, and nobody is as yet entitled to a patent. But I do not understand this to be the law of this case.

"Under the Mexican law or system, originally the people were required, for self-protection and other reasons to live in towns while cultivating outlying land, and the general laws of that country gave to such towns or pueblos four square leagues of land for the use of the inhabitants thereof, and occasionally by special concession, as in the present instance, grants of larger area were made for the same purpose. None of these towns were ever incorporated, in the sense in which we use the term, so far as my researches have gone. They were aggregations of people who lived together for mutual protection, and under the laws and customs of that country had officers for the administration of their municipal affairs; but there was no actual charter—no act of incorporation conferred by the superior power of the State—only the implication arising from the recognition of the existence of such towns, with authority to guide their own town affairs.

"This was the condition of things when New Mexico was acquired by the United States, and the legal status of these towns and their capacity to take as confirmees of grants of public lands have been recognized in too many instances by Congress and the executive departments through too long a period of time to be now seriously questioned.

"In the case under consideration the town of Las Vegas was not in existence at the time the original grant was asked for by Maese and his associates. One of the purposes for which the concession was made was to establish that town, and it was established after the manner and under the laws of Mexico, and has had an actual existence ever since. Congress recognized its legal and actual existence, ignored the original petitioners for the grant and confirmed it to the town, and, to that extent, made a change in the trustee. In view of all this it is too late now to say that Las Vegas has no legal existence. If a corporate capacity be necessary to enable the town to take under the grant, every presumption must be that it has the necessary corporate capacity, and the law so implies. Dillon, Mun. Corp., secs. 21, 22. At all events, the town having an actual existence, this department will not challenge its capacity to take what Congress clearly intended to give."

These views of the Secretary of the Department of the Interior were reiterated and inforced by him, on motion for reconsideration of his first decision, and the motion for reconsideration was accordingly overruled. 15 Land Dec., 58.

Upon consideration of the several grounds of demurrer assigned, and of the whole case, we are of opinion that the decree of the court below, dismissing the bill, should be affirmed; and *it is so ordered. Decree affirmed.*

29 TUESDAY, *October* 2*d*, *A. D.* 1900.

PABLO MAESE, JOSÉ L. LOPEZ, DIONICIO GONZALEZ, JESUS MARIA TAFOYA, Appellants,
vs.
BINGER HERMAN, Commissioner of the General Land Office of the United States, and Ethan Allen Hitchcock, Secretary of the Department of the Interior of the United States.
No. 971. October Term, 1900.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia, and was argued by counsel. On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said supreme court in this cause be, and the same is hereby, affirmed with costs.

Per MR. CHIEF JUSTICE ALVEY.

October 2, 1900.

30 Court of Appeals, District of Columbia, October Term, 1900.

PABLO MAESE, JOSÉ L. LOPEZ, DIONICIO GONZALEZ, JESUS MARIA TAFOYA, Appellants,
vs.
BINGER HERMANN, Commissioner of the General Land Office of the United States, and Ethan Allan Hitchcock, Secretary of the Department of the Interior of the United States.

The above-named appellants, Pablo Maese, Jose L. Lopez, Dionicio Gonzalez, Jesus Maria Tafoya, feeling themselves aggrieved by the order, judgment, and decree entered by the Court of Appeals of the District of Columbia on the 2nd day of October, 1900, in the above-entitled cause, do hereby appeal from said order, judgment, and decree to the Supreme Court of the United States, and pray that this their appeal may be allowed, and that the transcript of the record, proceedings, and papers upon which said order, judgment, and decree *was* made, duly authenticated, together with the assignment of errors herewith, may be sent to the Supreme Court of the United States.

H. C. BURNETT &
FRED BEALL,
Att'ys for Appellants.

31 UNITED STATES OF AMERICA:

In the Supreme Court.

PABLO MAESE, JOSE L. LOPEZ, DIONICIO GONZALEZ, JESUS MARIA Tafoya, Appellants,
vs.
BINGER HERMANN, Commissioner of the General Land Office of the United States, and Ethan Allan Hitchcock, Secretary of the Department of the Interior of the United States.

Pablo Maese, Jose L. Lopez, Di-nicio Gonzalez, Jesus Maria Tafoya, appellants, say that in the record of proceedings in the above-entitled case there is manifest error in this, to wit:

1st. The Court of Appeals of the District of Columbia erred in affirming the decision of the supreme court of said District wherein it sustained the demurrer to the bill of complaint and dismissed said bill.

2. The court erred in deciding and holding that the Las Vegas land grant was confirmed by Congress to the town of Las Vegas.

3. The court erred in deciding and holding that said land grant is a community grant.

4. The court erred in deciding and holding that the Las Vegas grant as made by the Mexican government was not intended to be assigned to Maese and his associates in absolute property, to them and their heirs, but that it was intended to be held by them in trust for the benefit of the inhabitants that might settle thereon.

H. C. BURNETT &
FRED BEALL,
Att'ys for Appellants.

(Endorsed:) October term, 1900. No. 971. Court of Appeals of the District of Columbia. Pablo Maese *et al.*, appellants, *vs.* Binger Hermann *et al.*, app'lees. Appeal to the Supreme Court of the United States and assignment of errors. Court of Appeals, District of Columbia. Filed Dec. 13, 1900. Robert Willett, clerk.

32 THURSDAY, *December 13th, A. D.* 1900.

PABLO MAESE, JOSÉ L. LOPEZ, DIONICIO GONZALEZ, JESUS Maria Tafoya, Appellants,
vs.
BINGER HERMAN, Commissioner of the General Land Office of the United States, and Ethan Allen Hitchcock, Secretary of the Department of the Interior of the United States. } No. 971.

On motion of Mr. Fred Beall, attorney for the appellants in the above-entitled cause, it is ordered by the court that said appellants be allowed an appeal to the Supreme Court of the United States on giving bond in the sum of three hundred dollars.

33 Know all men by these presents that we, Pablo Maese, José L. Lopez, Dionicio Gonzalez, and Jesus Maria Tafoya, as principal, and The United States Fidelity & Guaranty Company, incorporated under the laws of Maryland, as surety, are held and firmly bound unto Binger Hermann, Commissioner of the General Land Office of the United States, and Ethan Allan Hitchcock, Secretary of the Department of the Interior of the United States, in the full and just sum of three hundred dollars, to be paid to the said Binger Hermann, Commissioner of the General Land Office, and Ethan Allan Hitchcock, Secretary of the Department of the Interior, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this fifteenth day of December, in the year of our Lord one thousand nine hundred (1900).

Whereas lately, at a Court of Appeals of the District of Columbia, in a suit depending in said court between the said Pablo Maese, Jose L. Lopez, Dionicio Gonzales, and Jesus Maria Tafoya, appellants, against the said Binger Hermann, Commissioner of the General Land Office of the United States, and Ethan Allan Hitchcock, Secretary of the Department of the Interior of the United States, a decree was rendered against the said Pablo Maese, José L. Lopez, Dionicio Gonzalez, and Jesus Maria Tafoya, affirming a certain decree of the supreme court of the District of Columbia, and the said Pablo Maese, José L. Lopez, Dionicio Gonzalez, and Jesus Maria Tafoya having obtained an appeal to the United States Supreme Court to reverse the decree in the aforesaid suit, and a citation directed to the said Binger Hermann, Commissioner of the General Land Office, and Ethan Allan Hitchcock, Secretary of the Department of the Interior, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said Pablo Maese, José L. Lopez, Dionicio Gonzalez, and Jesus Maria Tafoya shall prosecute their appeal to effect and answer all costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

PABLO MAESE, [SEAL.]
By H. C. BURNETT, *Attorney-in-fact.*
JOSÉ L. LOPEZ, [SEAL.]
By H. C. BURNETT, *Attorney-in-fact.*
DIONICIO GONZALES, [SEAL.]
By H. C. BURNETT, *Attorney-in-fact.*
JESUS MARIA TAFOYA, [SEAL.]
By H. C. BURNETT, *Attorney-in-fact.*
THE UNITED STATES FIDELITY & GUARANTY COMPANY,
By J. S. SWORMSTEDT, *Attorney-in-fact.*

[Seal of United States Fidelity & Guaranty Company.]

[Cancelled internal-revenue stamps.]

Sealed and delivered in the presence of—

FRED BEALL.
KIE OLDHAM.

Approved by—

R. H. ALVEY,
Chief Justice.

[Endorsed:] No. 971. Pablo Maese *et al.*, appellants, *vs.* Binger Herman, Comm'r, &c., *et al.* Bond on appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed Dec. 20, 1900. Robert Willett, clerk.

34 UNITED STATES OF AMERICA, *ss:*

To Binger Herman, Commissioner of the General Land Office of the United States, and Ethan Allen Hitchcock, Secretary of the Department of the Interior of the United States, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Pablo Maese, José L. Lopez, Dionicio Gonzalez, Jésus Maria Tafoya are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this 20th day of December, in the year of our Lord one thousand nine hundred.

R. H. ALVEY,
Chief Justice of the Court of Appeals of the District of Columbia.

35 I, the attorney of record for the within-named appellees, Binger Hermann and Ethan Allen Hitchcock, do hereby for them and for each of them acknowledge service of the within citation and for them waive copies of same and hereby enter a general appearance for each and both of them.

This December 22, 1900.

WILLIS VAN DEVANTER,
Attorney for Appellees.

[Endorsed:] Court of Appeals, District of Columbia. Filed Dec 22, 1900. Robert Willett, clerk.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 34, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Pablo Maese, José L. Lopez, Dionicio Gonzalez, Jesus Maria Tafoya, appellants, *vs.* Binger Herman, Commissioner of the General Land Office of the United States, and Ethan Allen Hitchcock, Secretary of the Department of the Interior of the United States, No. 971, October term, 1900, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 26th day of December, A. D. 1900.

[Seal Court of Appeals, District of Columbia.]

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No., 18,018. District of Columbia Court of Appeals. Term No., 533 Pablo Maese, Jose L. Lopez, Dionicio Gonzalez, & Jesus Maria Tafoya, appellants, *vs.* Binger Herman, Commissioner of the General Land Office, & Ethan Allen Hitchcock, Secretary of the Interior. Filed January 11th, 1901.